

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Sun Life Personal Pension Plan ( <b>the Plan</b> )
Respondents	Aviva

## Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr Y has complained that the benefits payable from the Plan have been incorrectly calculated by Aviva and not in accordance with his policy documents.

## Background information, including submissions from the parties

4. On 23 August 1984, Mr Y opened the Plan with Sun Life (later Friends Life and then Aviva) on a 'with profits' basis.
5. On 9 November 1984, Mr Y became entitled to receive bonuses on the Plan.
6. On 16 November 1984, Sun Life sent Mr Y a schedule for the Plan. It stipulated a Policy Vesting Date (**PVD**) of age 70 and that Mr Y had also opted for an Alternative Policy Vesting Date (**APVD**) of age 60, where a Guaranteed Annuity Rate (**GAR**) of 10.29% was payable. The Schedule further said that other rules to the Plan were included in its booklet.
7. On 21 February 2017, Mr Y received a transfer value from Friends Life.
8. On 30 March 2017, Mr Y wrote to Friends Life saying that he believed the PVD to be age 60. Mr Y also argued that the bonuses calculated on his 'with profits' policy were too low.
9. On 17 May 2017, Friends Life responded and said that the PVD was age 70 but the option existed to set an APVD and that benefits could be taken at any age between 60 and 75, albeit with different options.

10. On 21 August 2017, Friends Life sent Mr Y a copy of the original Plan rules.
11. On 9 October 2017, Mr Y's representative raised a complaint with Aviva. The representative argued that Mr Y reached the PVD at age 60, that bonuses should not be deducted from the policy if he took his pension at that age and that the GAR at age 60 would be 10.29%, guaranteed for 5 years.
12. On 21 January 2018, Aviva maintained its view that the PVD for the Plan was age 70. It said that the bonuses Mr Y quoted in his complaint were calculated on the basic cash sum at the PVD, so he would have to take his pension at 70 in order to receive that amount. Aviva also said that if Mr Y were to take his pension earlier than the PVD then bonuses applied to the Plan would be reduced in line with the Plan rules. Aviva agreed that if Mr Y took a GAR at age 60 then the rate would be 10.29% however, it said this would be without a guarantee, but that other benefit options were available at different annuity rates.

## **Adjudicator's Opinion**

13. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-
  - The Adjudicator appreciated that Mr Y believed that he had specified a PVD of age 60 for the Plan. However, in the Adjudicator's view, the original application form that Mr Y completed clearly stated that if the Plan "is to commence on a with profits basis, it will specify a PVD at age 70". The Adjudicator considered that this was also clearly communicated on the original schedule for the Plan.
  - Consequently, in the Adjudicator's opinion, Aviva were entitled to reduce Mr Y's basic cash sum and bonuses in line with rule 2.4 of the Plan. This rule states that:

"In the event of

    - (i) the substitution of an earlier date for the Policy Vesting Date as provided in (a) or (ii) of section 1.3; or,
    - (ii) the discontinuance or reduction of regular premiums as set out in section 2.3 the amount of the Basic Cash Sum shall be reduced as determined by the Assurer and if the event is that described in (i) any bonus additions shall be correspondingly reduced."
  - The Adjudicator understood that Mr Y was greatly disappointed to ascertain the correct position with regard to his entitlements and the PVD. In the Adjudicator's opinion, Mr Y's pension could only be calculated in line with the Plan's rules and Aviva's approach was a correct interpretation of those rules.

14. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr Y for completeness.

### Ombudsman's decision

15. In his comments, Mr Y identified that the Plan offered several benefit options and he maintains that if he were to take a GAR at age 60, it should include a guarantee period of 5 years. The Plan's rules do provide a guarantee period as one option Mr Y can elect to take, albeit at a reduced rate. Specifically, rule 1.6 says that:
- “as an alternative to the annuity described in section 1.4 the annuitant may elect by giving Notice to receive one of the forms of annuity set out below:
- (a) A reduced annuity payable for a guaranteed period of either 5 or 10 years and thereafter during the lifetime of the annuitant. If the annuitant shall die before the expiration of the guaranteed period, the annuity shall continue for the balance of that period.
16. Consequently, I find that Mr Y's pension can only be paid in line with the Plan rules and he could only reasonably expect to receive a GAR of 10.29% at age 60 without a guarantee period. Although, Mr Y still has the option to investigate an annuity on a different basis (at the applicable rate) when he retires.
17. There is no dispute that Mr Y chose an APVD of age 60 and that he is entitled to take his pension from this date. However, Mr Y maintains that Aviva are not reducing his accrued bonuses correctly if he chooses this option, in line with the Notes (**the Notes**) he received with the Plan's Schedule in 1984. Mr Y considers that as the Notes are dated later, they supersede the Plan rules from 1981. The Notes said that “these bonuses, once allotted, are permanent additions to the Basic Cash Sum”. However, it does not stipulate that this is on an unreduced basis. Consequently, I do not find Mr Y's interpretation to be the intended meaning of the Notes as this information would not override the benefit structure laid out in the Plan rules. As the Adjudicator noted, the Plan rules provide for the reduction of bonuses in a manner “determined by the Assurer”. So, although bonuses are permanently allocated to Mr Y's Plan, I find that Aviva is entitled to reduce them in a manner it considers appropriate.
18. Mr Y only became entitled to receive bonuses for the Plan in November 1984 and his bonus for that year was calculated on a pro rata basis. He refers to this as the ‘two twelfths calculation’ and argues that it is not described anywhere in the Plan rules. Mr Y is correct that this method is not explicitly described in the Plan rules. However, Rule 2.1 provides that “the profits to be divided will be ascertained by such methods as the Directors of the Assurer think fit” and so I find that it is purely a matter for Aviva to determine the rate of any reductions it considers appropriate.

19. Therefore, I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
30 January 2019